

**MINUTES**  
**REGULAR MEETING OF BOARD OF LAND COMMISSIONERS**  
**June 18, 2007, at 9:00 a.m.**  
**Room 303 State Capitol Building**  
**Helena, Montana**

**PRESENT:** Lt. Governor John Bohlinger, Superintendent of Public Instruction Linda McCulloch, Secretary of State Brad Johnson, and Attorney General Mike McGrath

**ABSENT:** State Auditor John Morrison

Secretary Johnson moved for approval of the minutes from the May 21, 2007, meeting of the Board of Land Commissioners. Seconded by Ms. McCulloch. Motion carried unanimously.

**BUSINESS CONSIDERED:**

607-1 OIL AND GAS LEASE SALE APPROVAL (Held June 5, 2007)

Mary Sexton, Director DNRC, said on June 5, 2007, the department held its quarterly oil and gas lease sale at the MDoT building. There were 39 tracts offered for sale covering a total of 22,000 acres and they were leased for a total of \$358,647. The average bid was \$16.30 per acre and the high bid was \$140.00 per acre for tract #22 in Phillips County. This total was down from some of our other record-breaking sales but this was smaller in acreage and it didn't offer anything in Richland County. Ms. Sexton requested approval of the issuance of leases from the June 5, 2007, oil and gas lease sale.

Motion was made by Mr. McGrath to approve the oil and gas lease sale held June 5, 2007. Seconded by Mr. Johnson.

Ms. McCulloch I notice this was down in cash from about 1/3 of last fiscal year's sales. Is there a trend or can we see a trend yet?

Mr. Mason said as far as trends, yes, last fiscal year was a record for us. For that fiscal year we had about \$13 million in up-front bonuses. This fiscal year we are at about \$2.5 million in bonuses. We still have some spirited bidding in certain areas when there are tracts people are interested in. Richland County and some of the others, the areas where companies are interested, primarily have the land position leased up and what some of them tell us at the sales is that they basically have picked up the lease position for exploration, for speculative purposes they want to handle right now. So you see both state and federal leases have tapered off and are leveling off at a lower level. But looking forward its anybody's guess. There probably won't be the Richland County type of bidding we had last fiscal year. That was highly profitable, we don't get that all the time.

Ms. McCulloch said I would be content if you said this was a blip and not a trend, but you don't know. I'm looking at other things in school funding that's why I am questioning.

Mr. Mason said we will do our best.

Lt. Governor Bohlinger said I might suggest that when you look at the \$1.50 per acre bid that is being generated from those bids taken in Yellowstone, Wheatland, Rosebud, Powder River, much of Judith

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Basin, and Golden Valley County, these are wildcat ventures and I'm not sure this would be a trend but it might be some explanation as to why the dollar amount might be less than last year.

Ms. McCulloch said the reason I am asking is not just because of this, but many of our schools are funded in large part from oil and gas. Not through this means, but overall. We don't have an oil and gas section of OPI so this is the best time I have to see what it looks like in the future of those schools outside of the state lands.

Mr. Mason said the only additional comment I might add is our forecast for the next biennium during session was an average of about \$6 million per year. My best guess is this is a low balance but you never know.

A vote was taken on the motion on the floor to approve the oil and gas lease sale. Motion carried unanimously.

607-2      METALLIFEROUS LEASE APPLICATION APPROVAL (from R&D Exploration)

Ms. Sexton said this application is from R&D Exploration for silver and is for 30 acres in Deer Lodge County. We have reviewed the application and recommend an annual minimum rental of \$100 per year. There will be a 5% gross value. According to the Bureau of Mines and Geology there is a potential for silver in this area. The state owns the surface minerals and rights to the described section and we have attached a mining lease. They have to have a \$2,500 bond and there are fairly exacting stipulations in the mineral and gem mining lease. This is one of our typical leases. Ms. Sexton recommended approval of the lease application with the stipulations attached in Attachment A.

Mr. McGrath made a motion to approve the metalliferous lease application. Seconded by Ms. McCulloch. Motion carried unanimously.

607-3      AWARD OF LEASE #5333 IN DANIELS COUNTY

Ms. Sexton said this is a recommended award of lease for a parcel in Daniels County. There are 306 acres of crop land, 61 acres of CRP, and 273 acres of grazing land. This lease was held by Mr. Herb Brandt and the lease expired on February 28, 2007. During the renewal process, the Glasgow Unit Office recommended the lease not be renewed because the lessee had failed to manage the crop land as required. Mr. Brandt did appeal the decision and requested a hearing before me. Based upon the evidence presented at this hearing both by staff from the Glasgow office as well as Mr. Brandt, I upheld the decision to not renew to Mr. Brandt. The land was subsequently advertised for competitive bid and four bids were received. Mr. Brandt was the high bidder but we do recommend as provided in §77-6-202, MCA, that the Board reject Mr. Brandt's bid for reasons set forth in my order. This was due to his continued mismanagement of the property, low productivity, and also weed infestations. Therefore, I recommend the lease be awarded to the second high bidder, Troy Larson, at the rate which he bid. This is a request to allow the second high bidder to be awarded the lease.

Herb Brandt, former lessee, said the main problem he had with this lease generally was it was low return. In the nine years I've held the lease we've hailed out completely twice, discovered sawfly that has not been in our area since the 1950's, and had three years of drought. I collected off of three crops over the nine years, one of which we had a late snow storm which devalued the crop to 96¢. So I can understand the state's argument against renewal due to the return per acre. I purposely bid this in at 34% to guarantee

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the state a minimum of \$15.00 per acre per year allowing the state a set income per acre off agricultural land as a sign of my good faith. Part of the problem we've had with this land is there is about 100 acres that is highly productive but there is 200 acres of the 306 that is not. Last year on the current crop we averaged four bushels. Our neighbors didn't even cut it. I thought it was going to be higher, we had continuous average for one bushel, that's the land I prefer to put into alfalfa. We have a historical return in our area of one ton to the acre at \$20 per ton, which would generate more money. When I requested to put said land into alfalfa for hay production, I was rejected two years ago. I later found out two neighbors had requested and were allowed to put in these and the amounts they generated which I think are \$16.50 – \$17 per acre were then used at the hearing as examples of what could be produced off this land. I never was given a satisfactory answer as to why I was not allowed to do this. I knew it would generate more money for the state and cut my expenses. As to the summer fallow, which is the weed infestation issue, it mostly was a timing thing. Several times I was inspected and received a letter a week later after I had already completed the summer fallow. One time I received a letter a week after we talked to the on-site inspector who never mentioned a problem. If this lease is returned to me the state will be guaranteed its income off it of \$15 per acre plus anything over that. As for the grazing and CRP it was noted that there is no complaints. We have improved the water supply, wash outs, crossings, and other infrastructure on the place. When we received this lease the fences were not in the best of shape, we rebuilt all of them either restructuring them, improving them, adding gates, the water holes were all enlarged. As I stated in the meeting, there is no weather records I can use for evidence because all the weather stations are either in Glasgow or Scobey. One is 30 miles away the other is 70 miles away so there is no documentation I can offer. Also, at said hearing, for production reports against me I later found out that two neighbors that were next to me and had similar crops to mine were not entered into evidence. I thought they had switched to a cash lease I found out they were on shares. I did not know this at the time of the hearing. I wish to retain the lease and retain it at a rate that is beneficial to both the state and myself. One other thing I can state is given the late seeding date there can be no crops seeded on the land this year that will return the money for you. All the other subjective bids are a percentage only so there will be no cash income off the land this year. If I was to receive it it would go into summer fallow but I would still have to pay the state \$15 per acre, the state would receive approximately \$4,500 from me in lease money this year and every other year minimum. With the other if there is a crop failure the state receives nothing. As for the weed infestation, you should see it this year since nobody has touched it. It was just sprayed last week. So it will be a year or two before it recovers from what is growing on it now.

Mr. Johnson said how many AUMs will that 273 acres of grazing land handle?

Hoyt Richards, DNRC Glasgow Unit Office Manager, said during the renewal process two years ago the land was rated at 105 AUMs, consisting of 31 aftermath grazing, which is grazing of crop land, and 74 AUMs on the grazing land.

Mr. McGrath said Mr. Brandt indicated the land has been sprayed this year. Did the state do the spraying? Or the County?

Mr. Richards said during the advertisement process we were trying to get the advertisement out in time that we could bring in a lessee in a timely manner to manage the land. That did not happen. The DNRC hired a sprayer at its expense to control the weeds.

Mr. Johnson said were there any of Mr. Brandt's comments here today that represented new information for the department or do you still stand by the recommendation from the previous hearing?

Mr. Richards said we still stand by the recommendation. There are two sides to this, the revenue generation and the management of the lease. We started our program in 2004 of trying to make corrective

actions and we were not successful in that. That was the basis for our recommendation. We would have serious concerns in the future about those continual problems.

Motion was made by Ms. McCulloch to approve the director's recommendation to award the lease to Mr. Troy Larson. Seconded by Mr. Johnson.

Mr. Brandt said who do I talk to about paying for the improvements now that its going to be transferred?

Kevin Chappell, DNRC Ag and Grazing Bureau Chief, said if the Board passes this motion today and go along with the director's recommendation, as a part of that I will start the improvement settlement process to transfer that to Mr. Larson and he will be required to pay Mr. Brandt for those improvements.

A vote was taken on the motion. Motion carried unanimously.

607-4      SET MINIMUM BID FOR LAND BANKING SALE # 376

Ms. Sexton said several months ago the Board granted preliminary approval for the sale of this parcel. It was nominated by the Rock Creek Cattle Company and is located five miles northwest of Deer Lodge. It is approximately 225 acres with no public access. The land is surrounded by the private holdings of the Rock Creek Cattle Company. Upon completion of an appraisal at \$1,250 per acre, there was no market evidence presented to support a value without access, the total would be \$800,000. Additionally, the conceptual plan has a deed restriction added that allows limited development, up to 25 lots. There would also be a conveyance fee. One half of a percent perpetual conveyance fee will be applied to every transfer of the property and improvements over time. So this is a threefold minimum bid recommendation. First of all, the minimum bid of \$800,000; second, the land will be sold with a deed restriction of development for 25 lots; and third, that the conveyance fee be applied to every lot upon sale. I do recommend the Board set the minimum bid at \$800,000 with the deed restriction and the conveyance fee.

Mr. Johnson said do we have any idea what that conveyance fee might amount to? Have there been any estimates on what the value of those developed lots are going to be?

Ms. Sexton said we do not have that as far as I know. Mr. Lane from the Rock Creek Cattle Company might be able to give some ballpark figure.

Greg Lane, Rock Creek Cattle Company Managing Director, said we have not priced lots. This will be in the future phase of development so I'd be speculating at best. But it probably will be in the \$250,000 - \$300,000 range on average.

Mr. McGrath moved approval to set the minimum bid for land banking parcel #376. Seconded by Ms. McCulloch. Motion carried unanimously.

The following three timber sales were considered together.

607-5      DRY GULCH TIMBER SALE

The proposed Dry Gulch Timber Sale is located 30 miles east of Missoula and proposes to harvest 3,595 MBF off of 452 acres. The estimated minimum value is \$16.00/ton or \$404,966.00. There will be a Forest Improvement Fee of \$2.31/ton for all merchantable sawlog timber harvested. The sale contains 17 harvest units and the planned harvest will be a combination of commercial thinning and shelterwood

treatments to reduce stocking, improve vigor, and to promote regeneration where beetle mortality is occurring. No old growth will be harvested. Approximately 3.0 miles of new road would be constructed on trust lands and .2 miles of new road on Stimson Lumber Company land. Fifteen miles of road would be maintained across other ownerships of which approximately 6.5 miles are non-maintained county road. Existing roads in the project area would be upgraded to meet current BMPs. There was a public comment period and most concern was for wildlife. This area has several hawk nests, bat caves, bear, and lynx. Mitigation includes mechanized activities be restricted on all but approximately 95 acres during April 1 through August 31. The measures incorporated into the contract and harvest plan for the protection of hawk nests would encapsulate both bat caves and provide a 500-foot buffer around each cave. There will be 40% crown cover for Lynx habitat.

607-6      MUDD CREEK TIMBER SALE

The proposed Mudd Creek Timber Sale is located 13 miles north of Plains and proposes to harvest 4,246 MBF off of 557 acres. The estimated minimum value is \$610,308.00. There will be a \$2.38/ton Forest Improvement Fee charged for all merchantable sawlog timber harvested. The sale includes ten harvest units plus 55 acres of right-of-way clearing. The planned harvest will include silvicultural prescriptions for shelterwood on 327 acres and commercial thinning on 175 acres. The silvicultural prescriptions are planned to reduce fuel loading by removing trees infected with beetles and dwarf mistletoe. Western larch, ponderosa pine, and Douglas fir will act as seed trees. No old growth would be harvested. Approximately 6.83 miles of new road construction and 10.16 miles of reconstruction/reconditioning are required to meet current BMPs. All new construction would be closed to provide wildlife security and to reduce the spread of noxious weeds. Public involvement was solicited and comments received concerned wildlife, road use and construction, and noxious weeds. To address the wildlife concerns, 35-40% canopy cover will be retained to provide thermal cover. There will be a combination of restricted road access and visual screening along the open county road. To protect the gray wolf operations would be suspended and there will be temporary restriction of road use within a one mile radius of any known active wolf den. A combination of topography, group retention, and roadside vegetation buffers will reduce views into harvest units along open roads. To prevent the spread of noxious weeds heavy equipment used for felling, skidding, log processing and loading activities would be washed and inspected before being brought on site. All disturbed areas would be seeded with a native grass mix.

607-7      TIMBER CREEK TIMBER SALE

The proposed Timber Creek Timber Sale is located three miles northwest of Haugan and proposes to harvest 1,520 MBF off of 243 acres. The estimated minimum value \$207,226.00. There will be a \$2.65/ton Forest Improvement Fee assessed for all merchantable sawlog timber harvested. The sale consists of six harvest units. Silvicultural prescriptions include 188 acres of selection harvest, 32 acres of over story removal, and 23 acres of commercial thinning. The selection harvest would remove dead, dying and at-risk pine. The over story removal prescription would remove dead, infected and threatened pine. The commercial thinning treatment would reduce competition on 23 acres and would retain healthy, vigorous dominant and co-dominant Douglas fir and ponderosa pine. No old growth stands would be harvested. Approximately 1.5 miles of new road would be constructed and approximately one mile of existing road would be improved to meet current BMPs. A temporary bridge would be installed on an existing approach and removed upon sale completion. The public involvement included mailing letters to interested parties and advertising in newspapers. Comments were about wildlife, water quality, fisheries, noxious weeds, forest health and fire hazard. Mitigations include designs to limit impacts to wildlife. Contract requirements include retention of snags, and snag recruits concentrated along riparian corridors. Harvest would be deferred on 152 acres identified as Lynx mature foraging habitat, riparian Fisher habitat, or Goshawk nesting habitat. Timber Creek and its tributaries support native cold-water fisheries.

Riparian protection measures meet or exceed Montana SMZ law and Montana Administrative Rules for fish bearing streams. Road improvements associated with the project would reduce sediment delivery. Noxious weeds have been identified and targeted for treatment. Contract specifications require the purchaser to clean all off-road equipment prior to delivery to the project area. Forest health in the project area has declined due to beetle-caused mortality and competition in overstocked stands. Treatment would improve forest healthy by reducing overall stand density and removing dead, dying and threatened lodgepole pine. The removal of dead and dying pine would reduce fuel loads and wildfire risks in the long term.

Ms. Sexton recommended approval of the three proposed timber sales.

Motion was made by Mr. Johnson to approve the Dry Gulch, Mudd Creek, and Timber Creek Timber Sales. Seconded by Ms. McCulloch. Motion carried unanimously.

607-8      RIGHTS-OF-WAY APPLICATIONS  
A.      Rights-of-Way Applications

Ms. Sexton said these are our typical rights-of-way applications. I'd like to point out that Richland County is coming in with all of their historic roads and purchasing easements on their roads. Broadwater County also has an historic easement. On page 51, Southern Montana Generation and Transmission Co-op, this is the Highwood Plant just east of Great Falls, wants to bore a waterline underneath the Missouri River. Because this is a navigable water way the jurisdiction lies with DNRC. The last one I'd like to point out is on page 58. It is particularly interesting and from the Whitefish Hills Homeowners Association and is an amendment. There is a private access road that serves 80 single family residential lots. There will be compensation of \$102,000 and because they are adding lots to this the conveyance fee will be added as well. They have gone from 11 lots to 22 lots, the price of these lots is between \$600,000 and \$800,000 so we took \$712,000 as being the average. The conveyance fee per lot will be \$7,127.00. This month there are 58 applications for rights-of-way. They are #14244 through 14258 from Sun River Electric Cooperative for overhead electric distribution lines; #14259 through 14288 from Richland County for a public county road; #14292 from Northwestern Corporation, dba Northwestern Energy for a buried electric distribution line; #14293 from Robert and Marcia Andersen for a private access road to a single-family residence; #14294 and 14295 from Range Telephone Cooperative for buried telecommunications cables; #14296 from Glen and Bette Rindal for a private access road for normal farming and ranching activities; #14297 and 14298 from Southern Montana Electric Generation and Transmission Cooperative for steel water intake pipeline to be bored under the Missouri River; #14299 from Pondera County Canal and Reservoir Company for an irrigation pipeline; #14300 through 14302 from Nemont Telephone Cooperative for buried fiber optic telecommunications cable; #13616 (amended) from Broadwater County for a public county road; and #10839 (amendment 2) from Whitefish Hills homeowners Assoc for a private access road to serve 80 single family residential lots. Ms. Sexton requested approval of the rights-of-way package.

Ms. McCulloch moved approval for the rights-of-way applications. Seconded by Mr. Johnson. Motion carried unanimously.

B.      Cost Share Agreements with USFS

Ms. Sexton said I will take all three together. These are cost share agreements with the Forest Service under the Master Agreement. These agreements show what the state will receive, what the Forest Service will receive and of greatest interest is the cost agreement that shows the balances owed by each agency.

(1) Barnaby-Jim

This first agreement shows the Forest Service would owe the state \$32,000. The first cost share is with the Kootenai National Forest.

(2) Sheep Gap

This cost share is with the Flathead National Forest. Again, the cost agreement balance shows the state will be owed about \$1,800.

(3) Flat-Pardee

This is with the Lolo National Forest. The cost agreement balance shows the state owes the Forest Service about \$1,100.

Motion was made by Mr. McGrath to approve the three cost share agreements. Seconded by Mr. Johnson. Motion carried unanimously.

607-9      PACIFICORP V. STATE OF MONTANA – SETTLEMENT AND  
RECOMMENDATION FOR LEASE AGREEMENT

Ms. Sexton said the settlement is regarding claims between the State and PacifiCorp regarding the Bigfork Dam located in Flathead County on the Swan River under the authority of the Hydroelectric Resources Act. The State and PacifiCorp have agreed to enter into a lease for 47.8 acres, it is common school trust land which forms the bed of the Swan River. PacifiCorp will pay the State full market value rental equal to the State's share as partial landowner of the net benefits produced by Bigfork Dam. The lease term will commence as of January 1, 2007, and end at the expiration, no later than the expiration, of the Bigfork Dam's federal license. This was pursuant to Judge Honzel's decision and as discussed previously in Board meetings, this has to do with the lease of hydroelectric dams on the bed of navigable waterways. The other entities in this case would include Avista as well as PPL, but this is only with PacifiCorp and is a settlement agreement. Ms. Sexton recommended approval and authorization to issue a lease to PacifiCorp for the purpose of hydroelectric generation and direct this revenue to common schools.

Mr. McGrath said just to add some background information. As the Board will recall we have been involved in litigation with the owners/operators of hydroelectric projects throughout Montana for the last few years and the issue is whether or not hydroelectric power generating dams are required to pay rents to the state for occupation of state lands that are below the high water mark of navigable rivers. Director Sexton is correct, the litigation involves owners of most of the dams in Montana (PPL, Avista, and PacifiCorp). PacifiCorp owns one small generating facility right there at Bigfork. This settlement which has been approved and will be filed with the court today, is a settlement of all claims that both the state and PacifiCorp have and an agreement on PacifiCorp's part to pay rent to the State and enter into a long term lease. The proposal is that we would sign a ten year lease with PacifiCorp and it is based upon a formula where you take the percentage of the land the state owns as part of the old project and tie it into their gross revenue. So the State will be obtaining full market value for the rental based upon the project's net benefits. It is a very complicated formula but it is typical and similar to settlements that the Tribe has on Kerr Dam, it is settlement to the leases the State has for wind energy projects. It will serve as a template for negotiations and probably litigation with the other companies. The trial is set in October,

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2007. It will be a fairly involved trial but the advantage of having a settlement with PacifiCorp is we now have a basis to proceed. The trial, as Director Sexton mentioned, is in Judge Honzel's court. The only other thing I'd add is we anticipate the rents for this particular facility will be roughly \$50,000 per year.

Ms. McCulloch said I am curious not just of the PacifiCorp settlement but of future good settlements. Is this immediately distributable money to schools?

Tom Schultz, DNRC Trust Land Management Administrator, said this will be treated as distributable revenue as any lease payment would be.

Mr. Johnson said Mr. McGrath indicated there would be a ten year term of this lease, does that correspond with the expiration of the federal license for the operation of the dam?

Mr. McGrath said yes. The idea is to be structured around the FERC license periods. The ten year lease is relevant to that it is not precisely the same.

Motion was made by Mr. Johnson to approve the recommendation of lease agreement. Seconded by Ms. McCulloch. Motion carried unanimously.

PUBLIC COMMENT

Ms. Sexton said I'd like to say this past Thursday we had a celebration of the Tongue River Ranch several staff attended as well as neighboring landowners, county commissioners, Pheasants Forever, and other organizations. It was quite an event and was held on a bluff overlooking the Tongue River and some of the uplands of our largest land banking purchase to date. We took a tour of the ranch and I would say we really acquired quite a property. There is some work to be done and some management changes to attend to, but it really is quite a property with many attributes we can be proud of. Many of the local folks as well as the county commissioners were pleased we were able to complete this transaction.

Motion to adjourn was made by Ms. McCulloch. Seconded by Mr. McGrath.